

**IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
BRYSON CITY DIVISION**

**CRIMINAL CASE NO. 2:09cr11**

**UNITED STATES OF AMERICA,** )

)

)

**vs.**

)

)

)

**KIPLING JOE JONES.** )

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**ORDER**

**THIS MATTER** is before the Court on the Defendant's Notice of Appeal and Request for Appointment of Appeal Counsel [Doc. 83].

The Court construes the request as a motion contained within the Notice of Appeal. The Defendant was represented through sentencing by privately retained counsel. He has filed a notice of appeal in a *pro se* capacity. The Defendant now seeks leave to proceed on appeal with court appointed counsel based on the Defendant being "insolvent." [Doc. 83].

Federal Rule of Appellate Procedure 24 provides in pertinent part:

[A] party to a district-court action who desires to appeal *in forma pauperis* must file a motion in the district court. The party must attach an affidavit that:

(A) shows in the detail prescribed by Form 4 of the Appendix of Forms the party's inability to pay or to

give security for fees and costs;

(B) claims an entitlement to redress; and

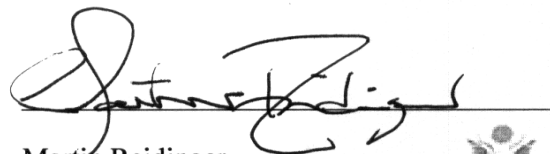
(C) states the issues that the party intends to present on appeal.

Fed.R.App.P. 24(a)(1).

The Defendant has not filed the affidavit required by the rule and he has not identified any issues for appeal. Therefore, he does not qualify to proceed without the prepayment of fees. As a result, the motion will be denied without prejudice to renewal before the United States Fourth Circuit Court of Appeals. Fed.R.App.P. 24(a)(5) ("A party may file a motion to proceed on appeal *in forma pauperis* in the court of appeals within 30 days after service of the [order denying relief].").

**IT IS, THEREFORE, ORDERED** that the Defendant's Request for Appointment of Appeal Counsel contained within his Notice of Appeal [Doc. 83] is hereby **DENIED** without prejudice to renewal in the United States Fourth Circuit Court of Appeals.

Signed: June 30, 2010

  
Martin Reidinger  
United States District Judge

